

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

W. R. GRACE & CO., et al.,¹
Debtors.

) Chapter 11
)
)
)
)

Case No. 01-01139 (JJF)
Jointly Administered

Objections due by:
June 22, 2001 at 4:00 p.m.
Hearing Date: (negative notice)
July 19, 2001 at a time t/b/d if necessary

**NOTICE OF MOTION OF THE DEBTORS FOR ENTRY OF AN
ORDER AUTHORIZING AND APPROVING AN OMNIBUS PROCEDURE
FOR SETTLING CERTAIN CLAIMS AND CAUSES OF ACTION BROUGHT
BY OR AGAINST THE DEBTORS IN A JUDICIAL, ADMINISTRATIVE,
ARBITRAL OR OTHER ACTION OR PROCEEDING**

TO: Parties required to receive notice pursuant to Del. Bankr. LR 2002-1.

On June 7, 2001, the above-captioned debtors and debtors in possession
(collectively, the "Debtors") filed the **Motion of the Debtors for Entry of an Order
Authorizing and Approving an Omnibus Procedure for Settling Certain Claims and
Causes of Action Brought By or Against the Debtors in a Judicial, Administrative,**

Arbitral, or Other Action or Proceeding (the "Motion") with the United States Bankruptcy

¹ The Debtors consist of the following 62 entities: W. R. Grace & Co. (f/k/a Grace Specialty Chemicals, Inc.), W. R. Grace & Co.-Conn., A-1 Bit & Tool Co., Inc., Alewife Boston Ltd., Alewife Land Corporation, Amicon, Inc., CB Biomedical, Inc. (f/k/a Circe Biomedical, Inc.), CCHP, Inc., Coalgrace, Inc., Coalgrace II, Inc., Creative Food 'N Fun Company, Darex Puerto Rico, Inc., Del Taco Restaurants, Inc., Dewey and Almy, LLC (f/k/a Dewey and Almy Company), Ecarg, Inc., Five Alewife Boston Ltd., G C Limited Partners I, Inc. (f/k/a Grace Cocoa Limited Partners I, Inc.), G C Management, Inc. (f/k/a Grace Cocoa Management, Inc.), GEC Management Corporation, GN Holdings, Inc., GPC Thomasville Corp., Gloucester New Communities Company, Inc., Grace A-B Inc., Grace A-B II Inc., Grace Chemical Company of Cuba, Grace Culinary Systems, Inc., Grace Drilling Company, Grace Energy Corporation, Grace Environmental, Inc., Grace Europe, Inc., Grace H-G Inc., Grace H-G II Inc., Grace Hotel Services Corporation, Grace International Holdings, Inc. (f/k/a Dearborn International Holdings, Inc.), Grace Offshore Company, Grace PAR Corporation, Grace Petroleum Libya Incorporated, Grace Tarpon Investors, Inc., Grace Ventures Corp., Grace Washington, Inc., W. R. Grace Capital Corporation, W. R. Grace Land Corporation, Gracoal, Inc., Gracoal II, Inc., Guanica-Caribe Land Development Corporation, Hanover Square Corporation, Homco International, Inc., Kootenai Development Company, L B Realty, Inc., Litigation Management, Inc. (f/k/a GHSC Holding, Inc., Grace JVH, Inc., Asbestos Management, Inc.), Monolith Enterprises, Incorporated, Monroe Street, Inc., MRA Holdings Corp. (f/k/a Nestor-BNA Holdings Corporation), MRA Intermedco, Inc. (f/k/a Nestor-BNA, Inc.), MRA Staffing Systems, Inc. (f/k/a British Nursing Association, Inc.), Remedium Group, Inc. (f/k/a Environmental Liability Management, Inc., E&C Liquidating Corp., Emerson & Cuming, Inc.), Southern Oil, Resin & Fiberglass, Inc., Water Street Corporation, Axial Basin Ranch Company, CC Partners (f/k/a Cross Country Staffing), Hayden-Gulch West Coal Company, H-G Coal Company.

Court for the District of Delaware, 824 Market Street, Wilmington, Delaware 19801 (the "Bankruptcy Court"). A true and correct copy of the Motion is attached hereto.

Objections and other responses to the relief requested in the Motion, if any, must be in writing and be filed with the Bankruptcy Court no later than 4:00 p.m. Eastern Time on June 22, 2001.

Objections or other responses to the Motion, if any, must also be served so that they are received not later than June 22, 2001 at 4:00 p.m. Eastern Time, by (i) co-counsel for the Debtors, James H.M. Sprayregen, Esquire, Kirkland & Ellis, 200 East Randolph Drive, Chicago, Illinois 60601 (fax number 312-861-2200), and Laura Davis Jones, Esquire, Pachulski, Stang, Ziehl, Young & Jones P.C., 919 North Market Street, Suite 1600, P.O. Box 8705, Wilmington, DE 19899-8705 (Courier 19801) (fax number 302-652-4400); (ii) the Office of the United States Trustee, Attn: Frank J. Perch, Esquire, 844 N. King Street, Wilmington, Delaware 19801 (fax number 302-573-6497); (iii) counsel to the Official Committee of Property Damage Claimants, Scott L. Baena, Esquire, Bilzin, Sumberg, Dunn, Baena, Price & Axelrod, First Union Financial Center, 200 South Biscayne Boulevard, Suite 2500, Miami, Florida 33131 (fax number 305-374-7593), and Michael B. Joseph, Esquire, Ferry & Joseph, P.A., 824 Market Street, Suite 904, P.O. Box 1351, Wilmington, Delaware 19899 (fax number 302-575-1714); (iv) counsel to the Official Committee of Personal Injury Claimants, Elihu Inselbuch, Esquire, Caplin & Drysdale, 399 Park Avenue, 36th Floor, New York, New York 10022 (fax number 212-644-6755), and Matthew G. Zaleski, III, Esquire, Ashby & Geddes, 222 Delaware Avenue, P.O. Box 1150, Wilmington, Delaware 19899 (fax number 302-654-2067); and (v) counsel to the Official

Committee of Unsecured Creditors, Lewis Kruger, Esquire, Stroock & Stroock & Lavan, 180 Maiden Lane, New York, New York 10038-4982 (fax number 212-806-6006), and Michael R. Lastowski, Esquire, Duane, Morris & Heckscher, LLP, 1100 N. Market Street, Suite 1200, Wilmington, Delaware 19801-1246 (fax number 302-657-4901).

IF NO OBJECTIONS ARE TIMELY FILED AND SERVED IN ACCORDANCE WITH THIS NOTICE, THE BANKRUPTCY COURT MAY GRANT THE RELIEF DEMANDED BY THE MOTION WITHOUT FURTHER NOTICE OR HEARING.


IN THE EVENT THAT ANY OBJECTION OR RESPONSE IS FILED AND SERVED IN ACCORDANCE WITH THIS NOTICE, A HEARING ON THE MOTION WILL BE HELD BEFORE THE HONORABLE JOSEPH J. FARNAN, JR., UNITED STATES DISTRICT JUDGE, ON JULY 19, 2001 AT A TIME TO BE DETERMINED AT THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE, 844 N. KING STREET, WILMINGTON, DELAWARE 19801. THE DEBTORS WILL NOTICE ANY OBJECTING PARTIES, THE RESPECTIVE COMMITTEES, AND ANY PARTY WHO SO REQUESTS OF THE TIME OF SUCH HEARING.

Dated: June 7, 2001

KIRKLAND & ELLIS
James H.M. Sprayregen
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and

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Co-Counsel for the Debtors and
Debtors in Possession

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:) Chapter 11
)
W. R. GRACE & CO., et al.,¹) Case No. 01-1139 (JJF)
) (Jointly Administered)
)
Debtors.)

Objection Deadline:
June 22, 2001 at 4:00 p.m.
Hearing Date: (negative notice)
July 19, 2001 at a time t/b/d if necessary

**MOTION OF THE DEBTORS FOR ENTRY OF AN ORDER
AUTHORIZING AND APPROVING AN OMNIBUS PROCEDURE
FOR SETTLING CERTAIN CLAIMS AND CAUSES OF ACTION
BROUGHT BY OR AGAINST THE DEBTORS IN A JUDICIAL,
ADMINISTRATIVE, ARBITRAL OR OTHER ACTION OR PROCEEDING**

The above-captioned debtors and debtors in possession (collectively, the "Debtors") hereby move (the "Motion") the Court for entry of an order authorizing and approving an omnibus procedure for settling claims and causes of action brought by or against one or more of the Debtors in a judicial, administrative, arbitral or other action or proceeding pursuant to section 363(b) of title

¹ The Debtors consist of the following 62 entities: W. R. Grace & Co. (f/k/a Grace Specialty Chemicals, Inc.), W. R. Grace & Co.-Conn., A-1 Bit & Tool Co., Inc., Alewife Boston Ltd., Alewife Land Corporation, Amicon, Inc., CB Biomedical, Inc. (f/k/a Circe Biomedical, Inc.), CCHP, Inc., Coalgrace, Inc., Coalgrace II, Inc., Creative Food 'N Fun Company, Darex Puerto Rico, Inc., Del Taco Restaurants, Inc., Dewey and Almy, LLC (f/k/a Dewey and Almy Company), Ecarg, Inc., Five Alewife Boston Ltd., G C Limited Partners I, Inc. (f/k/a Grace Cocoa Limited Partners I, Inc.), G C Management, Inc. (f/k/a Grace Cocoa Management, Inc.), GEC Management Corporation, GN Holdings, Inc., GPC Thomasville Corp., Gloucester New Communities Company, Inc., Grace A-B Inc., Grace A-B II Inc., Grace Chemical Company of Cuba, Grace Culinary Systems, Inc., Grace Drilling Company, Grace Energy Corporation, Grace Environmental, Inc., Grace Europe, Inc., Grace H-G Inc., Grace H-G II Inc., Grace Hotel Services Corporation, Grace International Holdings, Inc. (f/k/a Dearborn International Holdings, Inc.), Grace Offshore Company, Grace PAR Corporation, Grace Petroleum Libya Incorporated, Grace Tarpon Investors, Inc., Grace Ventures Corp., Grace Washington, Inc., W. R. Grace Capital Corporation, W. R. Grace Land Corporation, Gracoal, Inc., Gracoal II, Inc., Guanica-Caribe Land Development Corporation, Hanover Square Corporation, Homco International, Inc., Kootenai Development Company, L B Realty, Inc., Litigation Management, Inc. (f/k/a GHSC Holding, Inc., Grace JVH, Inc., Asbestos Management, Inc.), Monolith Enterprises, Incorporated, Monroe Street, Inc., MRA Holdings Corp. (f/k/a Nestor-BNA Holdings Corporation), MRA Intermedco, Inc. (f/k/a Nestor-BNA, Inc.), MRA Staffing Systems, Inc. (f/k/a British Nursing Association, Inc.), Remedium Group, Inc. (f/k/a Environmental Liability Management, Inc.), E&C Liquidating Corp., Emerson & Cuming, Inc.), Southern Oil, Resin & Fiberglass, Inc., Water Street Corporation, Axial Basin Ranch Company, CC Partners (f/k/a Cross Country Staffing), Hayden-Gulch West Coal Company, H-G Coal Company.

11 of the United States Code (as amended, the "Bankruptcy Code") and Fed. R. Bankr. P. 9019. In support of this Motion, the Debtors respectfully represent as follows:

Jurisdiction

1. This Court has jurisdiction over this Motion under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of this proceeding and this Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory bases for the relief requested herein are section 363(b) of the Bankruptcy Code and Fed. R. Bankr. P. 9019.

Background

3. On April 2, 2001 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (collectively, the "Chapter 11 Cases").

4. The Debtors engage in specialty chemicals and materials businesses, operating on a worldwide basis, with their corporate headquarters located in Columbia, Maryland. The Debtors predominately operate through two business units - Davison Chemicals and Performance Chemicals. The Debtors' parent company, W. R. Grace & Co. ("Grace"), is a global holding company that conducts substantially all of its business through a direct, wholly owned subsidiary W. R. Grace & Co. - Conn. ("Grace-Conn"). Grace-Conn owns substantially all of the assets, properties and rights of Grace in the United States and has 76 domestic subsidiaries and affiliates, 60 of which are debtors and debtors in possession in the Chapter 11 Cases.

5. The Chapter 11 Cases have been consolidated for administrative purposes only and pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, the Debtors continue to operate their businesses and manage their properties as debtors in possession.

6. On April 12, 2001, the office of the United States Trustee appointed three official committees in the Chapter 11 Cases as follows: (i) the committee of unsecured creditors (the "Creditors' Committee"); (ii) the committee of asbestos personal injury claimants (the "Asbestos Personal Injury Committee"); and (iii) the committee of asbestos property damage claimants (the "Asbestos Property Damage Committee") (the Creditors' Committee, the Asbestos Personal Injury Committee and the Asbestos Property Damage Committee, as well as any other official committee appointed by the United States Trustee in the Chapter 11 Cases, shall collectively be referred to as the "Committees").

Relief Requested

7. In order to minimize expenses, the Debtors seek the Court's approval of an order, pursuant to section 363 of the Bankruptcy Code and Fed. R. Bankr. P. 9019, authorizing the settlement of claims and causes of action, excluding asbestos based claims and causes of action, (the "De Minimis Claims") brought by or against one or more of the Debtors in a judicial, administrative, arbitral or other action or proceeding, pursuant to the omnibus procedure outlined below. As set forth in greater detail herein, the Debtors propose to settle two tiers of De Minimis Claims. The first tier consists of De Minimis Claims that do not exceed \$100,000. The second tier comprises De Minimis Claims greater than \$100,000 and equal to or less than \$1,000,000. The Debtors propose to settle these De Minimis Claims on negative notice to the following parties (collectively, the "Negative Notice Parties"):

<u>Counsel for the United States Trustee:</u> United States Trustee's Office U. S. Department of Justice 601 Walnut Street Curtis Center, Suite 950 West Philadelphia, Pennsylvania 19106 Attn: Frank J. Perch	<u>Counsel to the DIP Lender:</u> Latham & Watkins Sears Tower, Suite 5800 Chicago, IL 60606 Attn: Douglas Bacon
<u>Counsel to the Official Committee of Unsecured Creditors</u> Stroock & Stroock & Lavan LLP 180 Maiden Lane New York, New York 10038-4982 Attn: Robert Raskin Arlene G. Krieger	<u>Counsel to the Official Committee of Property Damage Claimants</u> Bilzin Sumberg Dunn Baena Price & Axelrod LLP 2500 First Union Financial Center 200 South Biscayne Boulevard Miami, Florida 33131-2336 Attn: Scott L. Baena
<u>Counsel to the Official Committee of Personal Injury Claimants</u> Caplin & Drysdale 399 Park Avenue, 36 th Floor New York, New York 10022 Attn: Elihu Inselbuch	

8. For purposes of determining the applicable dollar amount of a De Minimis Claim in order to permit the settlement thereof pursuant to this Motion (the "Settled Amount"), the Debtors propose that the Settled Amount equal the dollar amount of the allowed claim to which the Debtors and the applicable Settling Party (as defined below) ultimately agree in resolution of such De Minimis Claim. For example, if a Settling Party files a proof of claim in the amount of \$500,000, and the Debtors and the Settling Party ultimately agree that the Settling Party shall have an allowed claim of \$200,000, the Settled Amount shall be \$200,000. In no event will a settlement pursuant to the omnibus procedure set forth below (i) provide for any monetary payment to be made by the Debtors from property of their estates to or on behalf of third parties on account of any claims owing or arising prior to the Petition Date or (ii) resolve the Debtors' liability with respect to a claim based

upon the Debtors' alleged use, manufacturing or sale of asbestos containing products. Nothing in this Motion, however, shall be construed to limit the Debtors' right to resolve any asbestos based claims in accordance with the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure.

**The Debtors Should Be Permitted to Settle the
De Minimis Claims Pursuant to an Omnibus Procedure**

9. The Debtors hold various claims and causes of action against numerous third parties that they have asserted or will assert through litigation, administrative action or arbitration in appropriate forums. Similarly, third parties hold various claims and causes of action against one or more of the Debtors that have been or will be asserted through litigation, administrative action or arbitration. To minimize expenses and maximize value for the creditors of the Debtors' estates, the Debtors seek authority to resolve the De Minimis Claims by settlement pursuant to section 363(b) of the Bankruptcy Code and Fed. R. Bankr. P. 9019.

10. If the Debtors were required to obtain prior approval of this Court to settle each De Minimis Claim, and considering the ever growing size of the list of parties requesting notice and service of papers in the Chapter 11 Cases, the Debtors would incur significant costs associated with preparing, filing and serving separate motions for each proposed settlement. Similarly, the Debtors would likely suffer the delays incumbent with obtaining such Court approval while complying with the required notice periods and available hearing schedules. Therefore, the Debtors desire to establish an omnibus procedure in the Chapter 11 Cases that will allow them to enter into settlements on a more cost-effective and expeditious basis while preserving an oversight function for key parties-in-interest that will appropriately protect the asset value of the Debtors' material claims and causes of action.

11. A settlement of claims and causes of action owned by a debtor constitutes a sale of the property of the estate. See Northview Motors, Inc. v. Chrysler Motors Com., 186 F.3d 346, 350 (3d Cir. 1999). If a settlement is outside of the ordinary course of business of the debtor, it requires approval of the bankruptcy court pursuant to section 363(b) of the Bankruptcy Code. Id. at 351. In addition to obtaining such approval, a debtor typically must file a motion and provide notice and a hearing of such motion as required by Fed. R. Bankr. P. 9019.

12. In reviewing a motion for approval of a settlement, bankruptcy courts must "assess and balance the value of the claim that is being compromised against the value to the estate of the acceptance of the compromise proposal." In re Martin, 91 F.3d 389, 393 (3d Cir. 1996). This requires court consideration of the following criteria: "(1) the probability of success in litigation, (2) the likely difficulties in collection, (3) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of the creditors." Id. The approval of the settlement procedures proposed in this Motion is supported by application of these criteria.

13. With respect to the De Minimis Claims involving (i) non-insider third parties (the "Settling Parties") against any of the Debtors or (ii) any of the Debtors against the Settling Parties, as well as any cross-claims and counter-claims asserted against any of the Debtors by Settling Parties (or against the Settling Parties by any of the Debtors), the Debtors propose that they be authorized to enter into settlements pursuant to the following procedure (the "Omnibus Procedure"):

- a. For purposes hereof, a non-insider will mean any Settling Party that is not an "insider," as such term is defined in section 101(31) of the Bankruptcy Code;

- b. In no event will a settlement pursuant to this Motion provide for any monetary payment to be made by the Debtors from property of their estates to or on behalf of the Settling Parties on account of any claims owing or arising prior to the Petition Date; provided, however, that with respect to cross-claims and counter-claims, the settlement may provide for offsets in favor of the Settling Parties against, and up to but not exceeding the amount of, any monetary payments to be otherwise made by the Settling Parties to or on behalf of the Debtors;
- c. No settlement will be agreed to unless it is reasonable in the judgment of the Debtors upon consideration of (i) the probability of success if the claim is litigated or arbitrated, (ii) the complexity, expense and likely duration of any litigation or arbitration with respect to the claim, (iii) other factors relevant to assessing the wisdom of the settlement, and (iv) the fairness of the settlement vis-a-vis the Debtors' estates, creditors and shareholders;
- d. No settlement will be effective unless it is executed by the General Counsel of the Debtors or by an authorized representative of the Debtors;
- e. Subject to subparagraphs (a) through (d) above, with respect to any Settled Amount that does not exceed \$100,000, the Debtors, in their discretion, may agree to settle such claim or cause of action on any reasonable terms, and may enter into, execute and consummate a written agreement of settlement that will be binding on them and their estates without further action by this Court;
- f. Subject to subparagraphs (a) through (d) above, with respect to any Settled Amount that equals or exceeds \$100,000 but does not exceed \$1,000,000, the Debtors, in their discretion, may agree to settle such claim or cause of action only if they provide written notice, via facsimile transmission, to the Negative Notice Parties of the terms of the settlement, and such terms are not objected to in writing by any of the Negative Notice Parties within fifteen (15) days after the date of transmittal of such written notice; and in the absence of any such objection, the Debtors may enter into, execute and consummate a written agreement of settlement that will be binding on them and their estates three (3) days after the submission to the Court by the Debtors of a certificate of no objection with respect to the settled De Minimis Claims;
- g. If any of the Negative Notice Parties object to any settlement within fifteen (15) days after the date of the Debtors' transmittal of the notice of such proposed settlement, and the Debtors, in their sole discretion, still desire to enter into the proposed settlement with the Settling Party, the execution of the settlement shall not proceed except upon (i) resolution of the objection by the parties in question or (ii) further order of the Court after a hearing;

- h. Beginning with the period ending on September 30, 2001, and at three-month intervals thereafter, or at such other intervals that may be convenient to the Court during the pendency of the Chapter 11 Cases, the Debtors will provide a written report to this Court, with a copy to the Negative Notice Parties, no later than thirty (30) days after the end of each such period, concerning all settlements made during such period pursuant hereto, including the names and addresses of the Settling Parties, the types and amounts of the Settled Amounts, and the nature of the settlements, including the amount of any monetary payments received by the Debtors; and
- i. Any settlement that is not authorized pursuant to the foregoing procedure, or pursuant to any other Order of this Court, will be authorized only upon separate order of this Court upon a motion of the Debtors served upon the necessary parties-in-interest.

14. Nothing in the Omnibus Procedure is intended or should be construed to alter any requirements under the Debtors' insurance policies.

15. Pursuant to Fed. R. Bankr. P. 9019(b) of the Bankruptcy Rules, this Court may authorize the Debtors to settle certain classes of controversies without requiring separate notice and hearing with respect to each separate controversy. Given such authority, settlement procedures designed to streamline the court approval process, similar to those proposed above, have been approved in other large chapter 11 cases, including In re United Artists Theatre Company, Case No. 00-3514 (SLR) (Bankr. D. Del. 2000), and In re Harnischfeger Industries, Inc., Case No. 99-2171 (PJW) (Bankr. D. Del. 1999). Approval of the Omnibus Procedure is in the best interest of the Debtors and their estates and will not prejudice the rights of any party-in-interest in these cases.

**Approval of the Omnibus Procedure for Settling
De Minimis Claims is in the Best Interests of the Debtors and their Estates**

16. The Debtors believe that the relief requested herein will aid in the Debtors' efforts to reduce expenses and maximize value for the benefit of their estates, creditors and other

parties-in-interest. By granting the relief requested herein, the Debtors will be able to avoid the cost of having counsel draft and file numerous motions and send out numerous hearing notices. The procedure that the Debtors seek to implement pursuant to this Motion will also reduce the burden on the Court's docket while protecting the interests of all creditors through the notice and objection procedures described herein.

17. After careful analysis, and in the exercise of their business judgment, the Debtors have determined, and respectfully submit, that for all of the foregoing reasons the relief requested in this Motion is in the best interests of their estates and creditors.

Notice

18. Notice of this Motion has been given to: (i) the United States Trustee; (ii) counsel to the DIP Lender; (iii) counsel to the Committees; and (iv) all those parties that requested service and notice of papers in accordance with Fed R. Bankr. P. 2002. In light of the nature of the relief requested, the Debtors submit that no further notice is required.

No Prior Request

19. No prior Motion for the relief requested herein has been made to this or any other Court.

WHEREFORE, the Debtors respectfully request that the Court enter an Order
(i) authorizing and approving the Omnibus Procedure for settling certain claims and causes of action
brought by or against the Debtors in a judicial, administrative, arbitral or other action or proceeding
and (ii) grant such other and further relief as the Court deems appropriate.

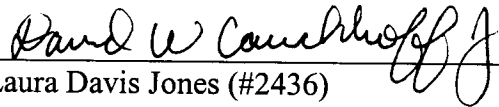
Wilmington, Delaware
Dated: June 7, 2001

Respectfully submitted,

KIRKLAND & ELLIS
James H.M. Sprayregen
James W. Kapp III
Samuel A. Schwartz
Roger J. Higgins
200 East Randolph Drive
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(312) 861-2000

and

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Co-Counsel for the Debtors and Debtors in Possession

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:) Chapter 11
)
W. R. GRACE & CO., et al.,¹) Case No. 01-1139 (JJF)
) (Jointly Administered)
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Debtors.)

**ORDER AUTHORIZING AND APPROVING AN
OMNIBUS PROCEDURE FOR SETTling CERTAIN CLAIMS
AND CAUSES OF ACTION BROUGHT BY OR AGAINST
THE DEBTORS IN A JUDICIAL, ADMINISTRATIVE,
ARBITRAL OR OTHER ACTION OR PROCEEDING**

Upon the motion (the "Motion")² of the above-captioned debtors and debtors in possession (collectively, the "Debtors") seeking entry of an order authorizing and approving the Omnibus Procedure for settling claims and causes or action brought by or against one or more of the Debtors in a judicial, administrative, arbitral or other action or proceeding pursuant to section 363(b) of the Bankruptcy Code and Fed. R. Bankr. P. 9019; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that this proceeding is a

¹ The Debtors consist of the following 62 entities: W. R. Grace & Co. (f/k/a Grace Specialty Chemicals, Inc.), W. R. Grace & Co.-Conn., A-1 Bit & Tool Co., Inc., Alewife Boston Ltd., Alewife Land Corporation, Amicon, Inc., CB Biomedical, Inc. (f/k/a Circe Biomedical, Inc.), CCHP, Inc., Coalgrace, Inc., Coalgrace II, Inc., Creative Food 'N Fun Company, Darex Puerto Rico, Inc., Del Taco Restaurants, Inc., Dewey and Almy, LLC (f/k/a Dewey and Almy Company), Ecarg, Inc., Five Alewife Boston Ltd., G C Limited Partners I, Inc. (f/k/a Grace Cocoa Limited Partners I, Inc.), G C Management, Inc. (f/k/a Grace Cocoa Management, Inc.), GEC Management Corporation, GN Holdings, Inc., GPC Thomasville Corp., Gloucester New Communities Company, Inc., Grace A-B Inc., Grace A-B II Inc., Grace Chemical Company of Cuba, Grace Culinary Systems, Inc., Grace Drilling Company, Grace Energy Corporation, Grace Environmental, Inc., Grace Europe, Inc., Grace H-G Inc., Grace H-G II Inc., Grace Hotel Services Corporation, Grace International Holdings, Inc. (f/k/a Dearborn International Holdings, Inc.), Grace Offshore Company, Grace PAR Corporation, Grace Petroleum Libya Incorporated, Grace Tarpon Investors, Inc., Grace Ventures Corp., Grace Washington, Inc., W. R. Grace Capital Corporation, W. R. Grace Land Corporation, Gracoal, Inc., Gracoal II, Inc., Guanica-Caribe Land Development Corporation, Hanover Square Corporation, Homco International, Inc., Kootenai Development Company, L B Realty, Inc., Litigation Management, Inc. (f/k/a GHSC Holding, Inc., Grace JVH, Inc., Asbestos Management, Inc.), Monolith Enterprises, Incorporated, Monroe Street, Inc., MRA Holdings Corp. (f/k/a Nestor-BNA Holdings Corporation), MRA Intermedco, Inc. (f/k/a Nestor-BNA, Inc.), MRA Staffing Systems, Inc. (f/k/a British Nursing Association, Inc.), Remedium Group, Inc. (f/k/a Environmental Liability Management, Inc.), E&C Liquidating Corp., Emerson & Cuming, Inc.), Southern Oil, Resin & Fiberglass, Inc., Water Street Corporation, Axial Basin Ranch Company, CC Partners (f/k/a Cross Country Staffing), Hayden-Gulch West Coal Company, H-G Coal Company.

² Capitalized terms not defined herein shall have the meanings ascribed to them in the Motion.

core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue of this proceeding and this Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been given; and after due deliberation and cause appearing therefor; and it appearing that the relief requested is in the best interests of the Debtors' estates, their creditors and other parties in interest; it is hereby

ORDERED that the Motion is granted; and it is further

ORDERED that the Debtors are authorized to settle claims and causes of action, excluding asbestos based claims and causes of action, filed in a judicial, administrative, arbitral or other action or proceeding by (i) any of them against any Settling Parties or (ii) any of the Settling Parties against the Debtors as well any cross-claims and counter-claims asserted against any of the Debtors by the Settling Parties (or against the Settling Parties by any of the Debtors) in connection with such claims and causes of action in accordance with the Omnibus Procedure as follows:

- a. For purposes hereof, a non-insider will mean any Settling Party that is not an "insider," as such term is defined in section 101(31) of the Bankruptcy Code;
- b. In no event will a settlement pursuant to this Motion provide for any monetary payment to be made by the Debtors from property of their estates to or on behalf of the Settling Parties on account of any claims owing or arising prior to the Petition Date; provided, however, that with respect to cross-claims and counter-claims, the settlement may provide for offsets in favor of the Settling Parties against, and up to but not exceeding the amount of, any monetary payments to be otherwise made by the Settling Parties to or on behalf of the Debtors;
- c. No settlement will be agreed to unless it is reasonable in the judgment of the Debtors upon consideration of (i) the probability of success if the claim is litigated or arbitrated, (ii) the complexity, expense and likely duration of any litigation or arbitration with respect to the claim, (iii) other factors relevant to assessing the wisdom of the settlement, and (iv) the fairness of the settlement vis-a-vis the Debtors' estates, creditors and shareholders;

- d. No settlement will be effective unless it is executed by the General Counsel of the Debtors or by an authorized representative of the Debtors;
- e. Subject to subparagraphs (a) through (d) above, with respect to any Settled Amount that does not exceed \$100,000, the Debtors, in their discretion, may agree to settle such claim or cause of action on any reasonable terms, and may enter into, execute and consummate a written agreement of settlement that will be binding on them and their estates without further action by this Court;
- f. Subject to subparagraphs (a) through (d) above, with respect to any Settled Amount that equals or exceeds \$100,000 but does not exceed \$1,000,000, the Debtors, in their discretion, may agree to settle such claim or cause of action only if they provide written notice, via facsimile transmission, to the Negative Notice Parties of the terms of the settlement, and such terms are not objected to in writing by any of the Negative Notice Parties within fifteen (15) days after the date of transmittal of such written notice; and in the absence of any such objection, the Debtors may enter into, execute and consummate a written agreement of settlement that will be binding on them and their estates three (3) days after the submission to the Court by the Debtors of a certificate of no objection with respect to the settled De Minimis Claims;
- g. If any of the Negative Notice Parties object to any settlement within fifteen (15) days of the date of the Debtors' transmittal of the notice of such proposed settlement, and the Debtors, in their sole discretion, still desire to enter into the proposed settlement with the Settling Party, the execution of the settlement shall not proceed except upon (i) resolution of the objection by the parties in question or (ii) further order of the Court after a hearing;
- h. Beginning with the period ending on September 30, 2001, and at three-month intervals thereafter, or at such other intervals that may be convenient to the Court during the pendency of the Chapter 11 Cases, the Debtors will provide a written report to this Court, with a copy to the Negative Notice Parties, no later than thirty (30) days after the end of each such period, concerning all settlements made during such period pursuant hereto, including the names and addresses of the Settling Parties, the types and amounts of the Settled Amounts, and the nature of the settlements, including the amount of any monetary payments received by the Debtors; and
- i. Any settlement that is not authorized pursuant to the foregoing procedure, or pursuant to any other Order of this Court, will be authorized only upon separate order of this Court upon a motion of the Debtors served upon the necessary parties-in-interest; and it is further

ORDERED that the Negative Notice Parties shall consist of the following entities or individuals:

<u>Counsel for the United States Trustee:</u> United States Trustee's Office U. S. Department of Justice 601 Walnut Street Curtis Center, Suite 950 West Philadelphia, Pennsylvania 19106 Attn: Frank J. Perch	<u>Counsel to the DIP Lender:</u> Latham & Watkins Sears Tower, Suite 5800 Chicago, IL 60606 Attn: Douglas Bacon
<u>Counsel to the Official Committee of Unsecured Creditors</u> Stroock & Stroock & Lavan LLP 180 Maiden Lane New York, New York 10038-4982 Attn: Robert Raskin Arlene G. Krieger	<u>Counsel to the Official Committee of Property Damage Claimants</u> Bilzin Sumberg Dunn Baena Price & Axelrod LLP 2500 First Union Financial Center 200 South Biscayne Boulevard Miami, Florida 33131-2336 Attn: Scott L. Baena
<u>Counsel to the Official Committee of Personal Injury Claimants</u> Caplin & Drysdale 399 Park Avenue, 36 th Floor New York, New York 10022 Attn: Elihu Inselbuch	

and it is further

ORDERED that, for each De Minimis Claim, the Settled Amount shall equal the dollar amount of the allowed claim to which the Debtors and the applicable Settling Party ultimately agree in resolving such De Minimis Claim; and it is further

ORDERED that nothing in the Omnibus Procedure shall alter any requirements under the Debtors' insurance policies; and it is further

ORDERED that the Debtors shall not settle any asbestos based claims pursuant to the Omnibus Procedures, however, nothing herein shall be construed to limit the Debtors' right to settle

any asbestos based claims in accordance with the Bankruptcy Code and the Federal Rules of Civil Procedure; and it is further

ORDERED that the Debtors are authorized to take such further actions and execute the appropriate documents as may be necessary or appropriate to effectuate the relief granted herein; and it is further

ORDERED that the Court shall retain jurisdiction with respect to any matters, claims, rights or disputes arising from or related to the implementation of this Order.

Wilmington, Delaware

Dated: _____, 2001

Joseph J. Farnan, Jr.
United States District Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:) Chapter 11
)
W. R. GRACE & CO., et al.,¹) Case No. 01-1139 (RJN)
) Jointly Administered
Debtors.)

AFFIDAVIT OF SERVICE

STATE OF DELAWARE)
) SS:
COUNTY OF NEW CASTLE)

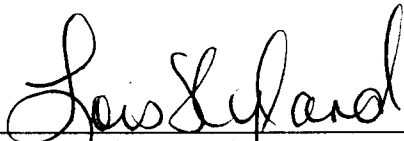
Lois Hyland, being duly sworn according to law, deposes and says that she is employed by the law firm of Pachulski, Stang, Ziehl, Young & Jones P.C. and that on the 7th day of June, 2001, she caused a copy of the following document(s) to be served upon the attached service list in the manner indicated:

1. Notice of Motion of the Debtors for Entry of an Order Authorizing and Approving an Omnibus Procedure for Settling Certain Claims and Causes of Action Brought By or Against the Debtors in a Judicial, Administrative, Arbitral or Other Action or Proceeding

¹ The Debtors consist of the following 62 entities: W. R. Grace & Co. (f/k/a Grace Specialty Chemicals, Inc.), W. R. Grace & Co.-Conn., A-1 Bit & Tool Co., Inc., Alewife Boston Ltd., Alewife Land Corporation, Amicon, Inc., CB Biomedical, Inc. (f/k/a Circe Biomedical, Inc.), CCHP, Inc., Coalgrace, Inc., Coalgrace II, Inc., Creative Food 'N Fun Company, Darex Puerto Rico, Inc., Del Taco Restaurants, Inc., Dewey and Almy, LLC (f/k/a Dewey and Almy Company), Ecarg, Inc., Five Alewife Boston Ltd., G C Limited Partners I, Inc. (f/k/a Grace Cocoa Limited Partners I, Inc.), G C Management, Inc. (f/k/a Grace Cocoa Management, Inc.), GEC Management Corporation, GN Holdings, Inc., GPC Thomasville Corp., Gloucester New Communities Company, Inc., Grace A-B Inc., Grace A-B II Inc., Grace Chemical Company of Cuba, Grace Culinary Systems, Inc., Grace Drilling Company, Grace Energy Corporation, Grace Environmental, Inc., Grace Europe, Inc., Grace H-G Inc., Grace H-G II Inc., Grace Hotel Services Corporation, Grace International Holdings, Inc. (f/k/a Dearborn International Holdings, Inc.), Grace Offshore Company, Grace PAR Corporation, Grace Petroleum Libya Incorporated, Grace Tarpon Investors, Inc., Grace Ventures Corp., Grace Washington, Inc., W. R. Grace Capital Corporation, W. R. Grace Land Corporation, Gracoal, Inc., Gracoal II, Inc., Guanica-Caribe Land Development Corporation, Hanover Square Corporation, Homco International, Inc., Kootenai Development Company, L B Realty, Inc., Litigation Management, Inc. (f/k/a GHSC Holding, Inc., Grace JVH, Inc., Asbestos Management, Inc.), Monolith Enterprises, Incorporated, Monroe Street, Inc., MRA Holdings Corp. (f/k/a Nestor-BNA Holdings Corporation), MRA Intermedco, Inc. (f/k/a Nestor-BNA, Inc.), MRA Staffing Systems, Inc. (f/k/a British Nursing Association, Inc.), Remedium Group, Inc. (f/k/a Environmental Liability Management, Inc., E&C Liquidating Corp., Emerson & Cuming, Inc.), Southern Oil, Resin & Fiberglass, Inc., Water Street Corporation, Axial Basin Ranch Company, CC Partners (f/k/a Cross Country Staffing), Hayden-Gulch West Coal Company, H-G Coal Company.

2. Motion of the Debtors for Entry of an Order Authorizing and Approving an Omnibus Procedure for Settling Certain Claims and Causes of Action Brought By or Against the Debtors in a Judicial, Administrative, Arbitral or Other Action or Proceeding.

Dated: June 7, 2001


Lois Hyland

Sworn to and subscribed before
me this 7th day of June, 2001



Notary Public

My Commission Expires: 2003

W. R. Grace 2002 Service List
Case No. 01-1139 (RJN)
Doc. No. 22588
June 7, 2001
14 – Hand Delivery
07 – Federal Express
95 – First Class Mail

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